J. Seward Johnson Lectures
in
Marine Policy

Some Likely Outcomes From The Next Law Of The Sea Conference

John R. Stevenson, Esq.
May 2, 1973
Redfield Auditorium
Woods Hole Oceanographic Institution
Woods Hole, Massachusetts

Approved For Release 2003/03/28 : CIA-RDP80B01495R000800140049-6

J. Seward Johnson

John R. Stevenson

The Lecture Series has been initiated as a tribute to Mr. J. Seward Johnson whose longstanding interest in man and the oceans has been influential in the establishment of the Institution's program in Marine Policy and Ocean Management. The objective of the Program is to promote interdisciplinary investigations of the problems generated by man's increasing uses of the sea.

The fourth J. Seward Johnson Lecture was given on 2 May 1973 by John R. Stevenson. The subject was **Some Likely Outcomes from the Next Law of the Sea Conference.** The lecturer, The Honorable John R. Stevenson, served as The Legal Adviser to the Department of State from 1969 to 1972. During this period he was Special Advisor to the United States Delegation to the United Nations General Assembly and a member of the United States Delegation to the General Assembly of the Organization of American States. He chaired both the United States Delegation to the United Nations Seabed Committee and the United States Government Interagency Task Force on the Law of the Sea. Mr. Stevenson received his A.B. from Princeton and his LL.B. and Doctorate from Columbia Law School. He is now in private practice with the firm of Sullivan & Cromwell.

PAUL M. FYE, President
Woods Hole Oceanographic Institution

Approved For Release 2003/03/28 : CIA-RDP80B01495R000800140049-6

SOME LIKELY OUTCOMES FROM THE NEXT LAW OF THE SEA CONFERENCE

I appreciate the opportunity to be in Woods Hole. I have had the opportunity of working with Dr. Fye and a number of the other ocean scientists in the last two years and I have particularly appreciated Dr. Fye's presentation of the scientific community's interest in ocean problems. I want to assure you that he has been a very eloquent advocate for the importance of freedom of scientific research in the whole ocean.

In the talk tonight I felt that rather than moving directly to what we can expect to happen in the upcoming Law of the Sea Conference it might be useful to at least briefly see how we got there. This will give you some idea of my own perspective in analyzing what is apt to happen in the future.

This upcoming Law of the Sea Conference is something that will basically affect all our interests, not only the particular interest of many of you which is freedom of scientific research, but also problems which are of very vital importance to many different interests in the U.S. These include vital interests, such as the mobility of our naval and air forces as well as the survival of our fishing industry; in terms of the energy and resource problems you are all hearing so much about these days, the oceans probably are the most important new source of petroleum and copper and nickel. Finally, I think we all today are very well aware of the tremendous problems of pollution of the environment, and the pollution of the marine environment is certainly one of the most important aspects of this pollution problem.

Basically the problem we have in the ocean today is that there is no agreement on what the rules are for conducting activities in an area which really represents 70% of the planet. Thus we have a serious problem of escallating conflicts between many different countries having different objectives. Now why this has happened needs some historical context to it. One could say, why is it that we suddenly realize that we do not have an adequate legal system under which these activities can be carried on in peace and without conflict. The fact of the matter is that for some 3½ centuries we did have a very viable legal regime for the ocean. It had one basic principle, namely the principle of freedom of the seas, and this was the cornerstone of what was probably the most durable part of international law as we have known it. But today, to take an extreme example, you have a situation where a number of countries far from accepting the freedom of the sea concept have been urging 200-mile territorial seas. If this was to be generally accepted, it would mean that approximately 35% of the ocean would cease to be the high seas and would then become the sovereign territory of the coastal states. This, of course, would also mean that freedom of the high seas, including freedom of scientific research, would be a thing of the past.

Now this freedom of the seas doctrine which lasted for 3½ centuries was not the universal rule since there was always an exception for a small area of territorial seas. For many years a three-mile territorial sea was the most generally accepted compromise. Within three miles of a coastal state the seas were sovereign territory subject only to a right of innocent passage for surface vessels. Beyond that distance the seas were free.

Prior to World War II there never was complete international agreement on the extent of the so-called territorial sea; however, the three-mile limit always had the largest measure of support. One could never get sufficient agreement between those urging three miles, and those urging up to 12 miles to develop a binding international treaty on the width of the territorial sea. However one thing was clear prior to World War II—beyond 12 miles, freedom of the seas was the rule. That is, everyone had the right to use the seas providing they did not unreasonably interfere with someone else's use of the sea. Well, what happened to destroy this generally accepted rule which, by and large, worked very satisfactorily?

Basically two things have happened: one is that technology outdistanced international law and international institutions and; second, in reaction to this technological explosion and the failure of the world to deal with this on an international scale, you had a vast expansion of claims by coastal states to greater and greater jurisdiction over the oceans.

I won't belabor the technological explosion to this audience for many of you are more familiar with it than I am. I certainly should point out the vast improvement in our technology for off-shore drilling for oil and the new technology for producing nickel and copper from manganese nodules on the deep seabed which many expect will be commercially viable in three or four years. Other advances are the mechanization and expansion of the distant water fishing fleet and, of course, the expansion of oceanic research.

At the same time that these technological breakthroughs occurred you had a tremendous economic need for utilizing this technology, including increases in the world demand for energy and for animal proteins from fish.

Up to World War II navigation and fishing were the primary uses of the sea but with these new uses being developed you had increasing conflicts over the use of the same ocean space. In many instances, the new uses of the ocean conflicted with the traditional uses and this became a matter of very legitimate concern to the coastal states, including the United States, who are naturally interested in protecting their own offshore resources and beaches. The natural response of many coastal states has been to assert more and more jurisdiction. One must remember that now the maritime countries, unlike in the 19th century, are not in a position to use force to protest many of these claims.

Not only do you have treaty restrictions on the use of force, but there are also many policy restrictions in terms of the high cost of maritime countries attempting to enforce their rights against developing coastal states.

The international community did try to do something about the unsettled state of the law of the sea during the 1958 and 1960 Law of the Sea Conferences; however, unfortunately, although these were very successful in terms of codifying many of the detailed rules applying the freedom of the seas and territorial sea principles, they were unable to agree on the maximum breadth of the territorial sea and they were also unable to agree on a precise outward limit for coastal states' rights to exploit seabed resources. The meetings paid very little attention to pollution problems and did not even address the problem of a legal regime for the deep seabed area beyond the continental margin. Thus, the situation that we face today is one in which the Law of the Sea Conference beginning its substantive deliberations in Santiago, Chile, in 1974, may well be the last opportunity for some sort of international solution that can peacefully accommodate many of these competing interests.

In May of 1970 the President announced what the mainlines of U.S. policy would be with respect to the Law of the Sea Conference and modernization of the legal regime of the oceans. His policy has been amplified and spelled out in more detail at the various meetings of the United Nations Seabed Committee, which has been acting as a preparatory committee for this Conference.

Before commenting on what I think are the most likely areas of compromise and the critical problems I would like to very briefly indicate what the U.S. policy basically is. In general, the approach has been to try to accommodate the different interests involved on the assumption that in many cases the conflicts are not real conflicts if properly analyzed and one can in many ways achieve a number of different objectives without necessarily sacrificing one interest to achieve another interest.

The first aspect of U.S. policy has been a willingness to move from the traditional 3-mile territorial sea, which we followed for nearly 200 years, to a 12-mile territorial sea. We have conditioned this change in position on obtaining international guarantees of unimpeded transit through international straits. There are some hundred international straits that now contain a high seas corridor under our 3-mile limit because they are wider than 6 miles. These will become territorial seas when you move from a 3 to a 12-mile territorial sea. If all straits between 6 and 24 miles become territorial seas and there were no international guarantee of unimpeded passage, you would only have the right of innocent passage which from the United States standpoint is not satisfactory because, for example, it would require submarines to navigate on the surface. This is one of the rules that was agreed to in the

permit military aircraft to overfly the strait. Moreover, the concept of innocent passage has become a very subjective concept by which coastal states could in effect decide who could or could not go through the strait.

The second basic concept of U.S. policy (and I'll state this first very generally) is to recognize that in order to get general agreement on a 12-mile territorial sea and to protect our own coastal resource interests, there must be broad coastal state resource management jurisdiction over the resources in an area beyond the territorial sea. On the other hand ,we have coupled the willingness to accept broad coastal state resource management jurisdiction with an insistence on international standards to be applied in this area, particularly and most important international standards protecting other uses of this area, such as navigation and freedom of scientific research. We have also conditioned the acceptance of coastal state resource management jurisdiction on compulsory dispute settlement, so that disputes with respect to the rights of other states in the area and the coastal states which are managing the resources can be settled through legal procedures and not through bilateral political confrontation between a maritime state and a developing coastal state.

Now the details of this general principle of coastal state resource management jurisdiction vary if you are talking about fisheries on the one hand or the seabed minerals on the other and I do not want to go into great detail. However, I think that it is very important, as you in New England know, that there would be adequate protection for coastal fishermen. The U.S. proposal basically would give coastal states regulatory jurisdiction, together with a preference for the fish that they have the capacity of catching, with respect to the so-called coastal species of fish (these include the fish that typically remain over the continental margin) as well as with respect to fish such as salmon which although they go so far out to sea return to spawn in coastal inland waters. We would not give coastal states jurisdiction over highly migratory fish such as tuna which in fact migrate off the shores of many different countries.

In this fisheries area there are certain specific international limitations of coastal state resource jurisdiction that we have in mind in addition to the general principles I mentioned concerning protecting other uses of the area and compulsory dispute settlement. We have suggested that, where the coastal state itself is not catching all the fish that can be caught under sound conservation principles, foreign fishermen should be admitted to the area on a reasonable basis, including payment of a reasonable management fee.

With repect to seabed resources, and here we are talking again about coastal areas and not the deep seabed, we propose that the coastal states would have

mainly considering here are petroleum resources since most of the petroleum to be found in the ocean will be found in the continental margins off the coasts. In this area we have proposed that the coastal state's resource management jurisdiction extend out to the edge of the continental margin, although we have indicated flexibility if a general agreement can be achieved by having some kind of a mileage limitation on coastal state resource management jurisdiction over petroleum and other resources of the seabed. We have suggested this coastal state resource management jurisdiction will be very complete in terms of giving the coastal state full right to decide who drills for this oil, the terms on which they drill for it, and what eventually happens to it. Nonetheless, we have urged that the coastal state's management jurisdiction be limited by international standards, thus preventing the coastal state from unreasonably interfering with other uses of the area and also by setting certain standards to prevent the pollution of this area. It is also different from the fisheries proposals in that we have suggested there should be some revenue sharing with the international community with respect to production from this area.

Considering the deep seabed, that is the area beyond coastal state resource management jurisdiction, the principal resources here are manganese nodules from which nickel, copper, cobalt and manganese can be produced, and presumably will be produced commercially by the end of this decade.

In this area, the United States has proposed a fully international regime for licensing the production of minerals from this area and for revenues to be devoted to international seabed purposes and for development. Here, also, we would have the same sort of international standards to protect other uses of this area, to protect the marine environment and have a compulsory dispute settlement mechanism to make sure that there were no infringements on other uses of this very important area.

With repect to scientific research, I have already indicated what our position has been—in general, it has been to work for maximum freedom of scientific research and also to suggest the importance of dissemination of the results of such research and participation by scientists from developing countries.

Now what are the chances for agreement and how far can some of these U.S. objectives that I mentioned be realistically achieved in the course of the Law of the Sea Conference. One should note that in addition to the Conference itself there have already been a series of meetings of the Seabed Committee acting as a preparatory committee; it, in fact, has not limited itself to technical matters but has been dealing with some of the political issues that must be dealt with at the conference itself. A session of this committee has just finished meeting in New York and there will

be a two-month session this summer in Geneva which will be of very great importance in determining the success of the Conference beginning next fall and continuing next spring.

It is also important to note that the resolution deciding that there should be this definite conference schedule was adopted unanimously by the General Assembly of the United Nations in the fall of 1972, so that there was clearly a very strong consensus that we should move forward as promptly as possible in attempting an international agreement.

Well, in what areas does it look as if agreement is emerging? I think that in terms of freedom of navigation there is a very real possibility of achieving the 12-mile territorial sea. I think that in addition to the very large number of states that now claim a 12-mile territorial sea, a number of the states that have been claiming more than that, and up to 200 miles, have expressly stated they recognize freedom of navigation and freedom of overflight in the area beyond the 12 miles. Other states presently embracing the 200-mile territorial sea have indicated that, providing an acceptable international agreement in which their resource interests in the area beyond 12 miles were satisfied, they would go along with this 12 mile figure.

Now, realistically there are two basic conditions on which this optimistic prediction is based. On the one hand, the United States and a number of the other maritime countries are conditioning the 12-mile territorial sea on obtaining agreement at the same time on free transit through international straits. On the other hand, developing countries are willing to agree to the 12-mile territorial sea only if they get jurisdiction over resources beyond 12 miles as part of the same package.

This brings me to the second area where it is quite clear that a consensus is emerging, which is the area of coastal state resource management jurisdiction. I think the vast majority of states going to the Conference have indicated a willingness to recognize some form of coastal state resource management jurisdiction beyond 12 miles. Now, of course, there remain serious differences as to how far out this coastal state resource management jurisdiction is to extend and there remain differences as to what standards there should be in terms of international protection of other uses of this area. But there is a consensus on the underlying general concept.

Secondly, with respect to the area beyond this coastal state resource management jurisdiction there is very general agreement that there should be an international legal regime for the seabeds beyond coastal state jurisdiction, wherever it stops. The strongest evidence of this was that in 1970 the General Assembly again adopted, without any negative votes, a declaration of principles for this area of the seabed beyond national jurisdiction. At the time the Soviet Union and a number of the eastern European countries,

meetings they have in effect withdrawn their opposition to this concept of an international legal regime for the seabed beyond international jurisdiction. Their position was initially predicated primarily on their opposition to having any kind of revenue sharing with the international community and also on their objection to having any kind of international authority in this area. However, they have now, in principle, agreed to accept those two elements providing they are part of a generally accepted package and, of course, with no agreement as to the details of those two aspects. We have had a working group of the preparatory committee which has been trying to spell out what the actual treaty principles for this area beyond national jurisdiction should be, and while it is a long way from agreement it has gotten to the point of drafting treaty articles and preparing alternative texts so that the political decisions can be made in the context of fairly specific proposals.

All right, so much for the area of general consensus; now, what are the critical problems that we are facing if you are going to get an overall acceptable package? Well, I think the first problem has already been signaled by what I said previously about general acceptance of coastal state management jurisdiction. The key problem is how far out does this coastal state resource management jurisdiction extend and to what extent is it to be subject to international standards and international accountability? The great majority of developing coastal countries, which have indicated a view, have supported the idea of a 200-mile exclusive jurisdiction over both the fish and mineral resources of this area, and at least for the present are not accepting the concept of any international limitations or standards by which that coastal state jurisdiction will be governed. I think the most striking evidence of the very general support for this concept was that at a regional meeting of the Caribbean States about a year ago and almost concurrently a regional meeting of African experts of the law of the sea, both groups came up with the proposal for a 12-mile territorial sea linked with a 200-mile coastal state exclusive resource zone. Other states have been taking a different position. For example, the distant water fishing states, particularly the Soviet Union and Japan, have been urging much narrower limits for coastal state fishing jurisdiction. A number of landlocked and shelf-locked countries of the world have been urging that as far as seabed minerals jurisdiction go that the coastal state jurisdiction not go that far, and have suggested a 40 mile alternative. They, of course, wish to maintain more of the ocean for the purely international area in which they will participate. The United States, as I mentioned before, has accepted the concept of very broad coastal state jurisdiction, although we suggest in the case of fish that its limit be determined by the location of the coastal species of fish rather than by any mileage limitation. For seabed resources we have

been talking in terms of the continental margin where most of the petroleum is contained but have indicated flexibility on a mileage limitation as an alternative. We have been stressing the necessity that whatever the extent of the coastal state resource management jurisdiction it must protect other uses of this area including, most importantly, navigation and scientific research. While a number of the developing countries have indicated, both privately and to a lesser extent publicly, that they understand the concerns, they have continued to take the position that only when the concept of an exclusive resource zone is accepted will they begin to consider international limitations on the exclusive coastal state resource zone.

With respect to the problem of transit through and over international straits, the situation has been that the U.S. proposal for free transit has been supported by other maritime countries, particularly the Soviet Union, the United Kingdom, and France and by a limited number of developing countries, such as Singapore and Argentina. It has been very strongly opposed by Spain, the Asian Archipelago countries of the Philippines and Indonesia, and by the Arab states. The great bulk of the developing countries have stayed quiet on this issue. The U.S. has continued to stress that we are not interested in having high seas freedom in straits but simply a right to transit international straits. We have also attempted to accommodate the straits' states very legitimate concern with the problem of accidents and pollution by suggesting that the Law of the Sea treaty should make it mandatory that vessels navigating straits observe the International Maritime Consultative Organization's (IMCO's) rules for traffic separation schemes in straits. Hard as it is to believe, these are only recommendatory at the present time and we feel there is no excuse for them not being made obligatory. We also feel that aircraft overflying straits (in this instance we are talking primarily about military aircraft because civilian aircraft are covered by other international agreements) should normally comply with the International Civil Aviation Organization's traffic safety rules. Moreover, we think that where an accident occurs because a vessel or an airplane does comply with the safety rules that there should be an international obligation of strict liability so that there will just be no question of the coastal state having to bear the financial burden of any accident that occurs.

The negotiations on the straits issue are in some respects only commencing because of procedural problems that arose in the committee with respect to the scope of the Conference, but you already have a situation in which there have been some recent developments. At the last session we had an actual proposal by the so-called strait states reflecting their point of view that the traditional rule of innocent passage should continue to apply and that there should be special rules for nuclear power vessels, super tankers, and I hate to mention it in this audience, scientific research vessels. On the other hand, the

Israel Shaw has introduced a straits article which, while basically following the U.S. position on free transit, does define the straits in which the free transit will be protected as only straits connecting two parts of the high seas which would, of course, not cover a strait like the Gulf of Tiran which connects the high seas with the territorial sea of a third state, in that case the territorial sea of Israel.

I think that considerable additional discussion on this issue will take place this summer, and hopefully there will be more clarification of what various countries are really seeking. The United States has many times made the point that we are only talking about a right of transit and not the right to pollute or fish, or do any other things in the strait, but I am not sure that has been fully understood.

Concerning the problem of the regime for the deep seabed area, as I previously indicated, there has been a very general agreement in principle. However, once you start to translate very general principles into very specific treaty articles some of the problems that were passed over in developing the general principles start to surface. For example the general principles recognize the common heritage of mankind in the seabed beyond national jurisdiction. Now, we have had a very definite issue arise over whether common heritage means common ownership as some developing countries have asserted. If it were to mean common ownership, no one could exploit the seabed until we had an international agreement. The point of view of the United States and other countries with the technical capacity to engage in exploitation in this area has been that until international agreement is reached there exists a right to exploit the deep seabed subject to reasonable regard for other uses of the area.

The general principles also recognize that the deep-sea area should be used exclusively for peaceful purposes. Some countries have interpreted this as meaning that the area cannot be used for any military purposes whatsoever. The United States' position and that of a number of other countries has been that peaceful use means that it will be used in accordance with the United Nations charter and that the whole question of military uses is more appropriately dealt with in the disarmament context.

However, there is real progress being made on principles. Probably the most difficult problem in this area beyond national jurisdiction is that of what type of an international agency will you have and what will be its powers. This is a problem which in the United Nations nomenclature is described as the problem of the international machinery.

One important machinery problem concerns the exploitation of mineral resources. In the present state of technological knowledge this production will be limited to nickel, copper, cobalt and manganese from manganese nodules lying on the deep seabed bottom. The issue is whether the production of these minerals

shall be carried on by individual countries and individual companies on the basis of licensing and regulation by the international organization or whether the international organization shall itself engage in production. A number of the developing countries have urged that in their view these resources are all the common heritage of mankind and the only way the international community can basically benefit from this common heritage is to have the international organization itself carry on the activity. The United States and a number of other developed countries have suggested that the international community would benefit much more immediately and directly if the revenues from these areas are shared and if the international seabed authority provides technological assistance, but does not itself directly attempt the investment and personal organization that would be required to carry on this activity.

Another important problem with respect to the deep-sea ocean is what sort of voting arrangement are you going to have in the executive body, which will be the most important organ of this international agency. Here again you have a difference of opinion with many developing countries urging the one nation—one vote principle. The developed countries say that if they are going to obtain the agreement of their governments and national legislatures to come into this organization there must be some protection for the countries that have the capacity to develop the deep-sea areas, but rather than doing it themselves, agree to operate under an international system.

With respect to pollution, I'll be very brief. I think that there is no real jurisdictional problem as far as pollution of the ocean from land-based sources or from seabed exploitation within coastal state resource management jurisdiction. It is recognized that coastal state should have primary responsibility for enforcing states should have primary responsibility for enforcing areas. However, I think there is a very definite feeling that it would be desirable to have international standards which the coastal states would adhere to in enforcing pollution control. We have always very strongly urged that coastal state resource management jurisdiction should be subject to a requirement of minimum international pollution standards. You all know that pollution of the oceans within a particular coastal state resource management area can have very adverse effects in many other areas far beyond that jurisdiction.

The difficult problem in the pollution area, at least as far as the Law of the Sea is concerned, is primarily the problem of pollution from vessels. The basic problem here is reconciling the coastal state's very legitimate interest in protection from pollution, with international interests in freedom of navigation. I think there has been a growing consensus in this area that international standards are desirable. Most people are impressed with the logic that if you have

coastal state control the problem for the merchant marines of the world becomes virtually insolvable and furthermore the standards will not be anywhere nearly as effective if they vary from area to area. the difficult aspect concerns who should enforce these general standards. Here you have the maritime states urging that the only efficient way to enforce vessel standards is for the flag state that controls the vessel to enforce the standards and possibly to supplement this by a requirement that port states, where these vessels go, inspect them and make sure they are in compliance with the standards. Thus there is no need for the coastal states where the vessels are merely transiting their waters to attempt to board these vessels and to enforce standards. However, a number of coastal states have taken the position that, while, in fact, they would hope that the flag states and port states will insure that there will be no pollution, they still want the residual jurisdiction to take action in the area beyond their territorial sea. Frequently, they have urged that they should have this authority in the area of their coastal state resource management jurisdiction zone.

One issue which is being discussed, but in respect of which no agreement has been reached, is that of the freedom of scientific research. Here again you have something somewhat akin to the pollution problem because a number of the developing coastal states that have been urging this exclusive coastal state resource zone of 200 miles have, in addition to wanting coastal state resource jurisdiction and coastal state pollution jurisdiction, also wanted coastal state control over scientific research in this area. I think that this is the principal threat to freedom of scientific research. There have been some countries that have also suggested that in the area beyond coastal state jurisdiction, the international agency should have some regulatory authority with respect to scientific research but this certainly has not been discussed to date to anywhere near the extent of coastal state control in the area of coastal state resource management.

The United States, as I previously said, has strongly opposed this position. It has been one of our basic principles that in agreeing to broad coastal state resource management jurisdiction other freedoms, including freedom of scientific research in this area, should be preserved. However, this still remains a difficult issue.

What have we been doing about it? We have been trying our best to inform other countries about the value of scientific research and have been assisted in this by the scientific community. Last summer, Professor John Knauss of the University of Rhode Island gave an excellent presentation and, more recently at the meeting in New York, Dr. Philip Handler, President of the National Academy of Sciences, also spoke, pointing out to the developing countries that scientific

was something very different from commercial exploration. We have also had attempts to educate developing countries by a United Nations exhibit on deep-sea drilling and by a trip of the delegates to Columbia's Lamont-Doherty Geological Observatory. More particularly and I think perhaps our most successful effort, and for which we are thankful to Woods Hole, was the visit by the research ship **Knorr** to New York. This visit was very well received and I think very helpful.

In areas other than education, we have indicated great receptivity to the concerns of the coastal states with respect to participation in and obtaining the results of research.

On the question of whether we can reach any agreement at the Law of the Sea Conference, I think that prospects were vastly increased by the action of the United Nations General Assembly last fall in unanimously agreeing on the Conference schedule. I think this also shows that the so-called consensus approach, where you attempt to accommodate different points of view before taking a vote, can achieve significant results. However, the success of the Conference is going to depend very markedly on how successful the 8-week session this summer is in moving further down the road towards dealing with some of these unsettled issues which I have referred to, and further developing a consensus on points where we have made progress. Certainly one of the keys to the success of the Conference will be the attitude of responsible leaders of developing countries who are beginning to realize that it is not just a question of using their voting majority to ram through provisions in their interests, and that a treaty without the United States, the Soviet Union and the other principal maritime countries will not be worth much. They and we are going to have to follow something like the consensus approach in order to try to develop a generally acceptable treaty.

Well, as I said at the outset, the law of the sea is in a state of crisis and is being challenged. On the other hand, there is a tremendous opportunity. If we can develop effective rules and effective institutions in this area it should have a very definite fall-out effect on the effectiveness of international law and international institutions in general.

THANK YOU VERY MUCH

Dr. Fye:

Thank you very much Dr. Stevenson. I think your very lucid, precise and clear expression of what we face in the Law of the Sea Conference has been extremely helpful to us. Your challenge in the beginning that this may be the last opportunity for peaceful accommodation of these conflicting interests impresses us with the enormous importance of the Conference. I view your indication of agreement so far as a very encouraging one, and your statement of the positive problems

ahead. Dr. Stevenson has graciously consented to answer questions.

Question:

The U.S. participation in the agreement would, of course, require Senate confirmation. Have key senators from the important committees been involved in the considerations to the point?

Answer:

Yes, they have been. We have consistently briefed key senators in various committees. In fact, there are a number of different committees, not just the Foreign Relations Committee, but the Commerce Committee and the Interior Committee and, to a certain extent, the Armed Forces Committee. But more than that we have had two Senators on our delegation—Senator Pell of Rhode Island in particular has participated in a number of the meetings—and other Senators who couldn't come themselves have sent staff members. There has been considerable interest and I think they have been kept well advised.

Question:

How does the military contribute to these meetings?

Answer:

Well, here again very much so. In Washington we had an interagency task force for the law of the sea which formulated the U.S. position. While I have been stating very flatly the U.S. positions, they didn't start out that way; they only emerged after a good deal of interagency discussions back and forth. We have always had military representation on our delegation.

Dr. Fye:

I should say that a great deal of success of that interagency task force looking at these things was because Dr. Stevenson headed that group.

Question:

I am intrigued by the concept of defining the area for the coastal state resource management not in terms of mileage but in terms of function, and I wonder what types of disputes you see arising from this concept and how might they be settled?

Answer:

The problems with that concept have been first in the mineral resource area. Here we were suggesting what we thought was logical—control over the mineral resources of the continental margin. This is the area where most of the petroleum is, so it seemed reasonable to have coastal state resource management extend to the edge of the continental margin. The problem is political—many countries of the world, particularly those of the west coast of Latin America, do not have a broad continental margin so they say that this is not fair. They would like a mileage limit or at least a

Question:

How far does the adventurous codfish swim?

Answer:

Well, here again, in the case of living resources, the so-called coastal species, by and large, do stay within the continental waters over the continental margin. Salmon and other anadromous species go all over the ocean, and there is a very strong scientific case for giving the coastal state control over these anadromous species and only fish for them when they are returning to spawn. After all, the coastal states own the rivers that have to be kept in shape for that stock to prosper.

Question:

Canada has recently extended its jurisdiction to 100 miles on the grounds that this is to defend their territorial integrity from pollution. The provisions have rules that will inhibit freedom of transit of merchant vessels regulations. Do the Canadians still support this position?

Answer:

With respect to the Canadian position, two comments are important. One is, that once the Canadians began to address the problem of implementing those laws with respect to the coastal state pollution zone, they found it took them much longer than anticipated to come up with the necessary regulations and make them effective. It is much more complicated than it appears on the surface. The second comment is that in justice to the Canadian position, they, from the outset, have said that they are doing this as an emergency measure and that they would prefer international agreement. In fact, they have been actively pushing for an international agreement. We, of course, felt that they prejudiced the possibility of an international agreement by acting unilaterally. However, the Canadians are not asserting their laws as the best answer but simply as an emergency measure. Their concept of coastal resource management is somewhat different from ours. They talk more in terms of coastal state custodianship and of going somewhat further in pollution in terms of coastal state action, yet like a number of the developing countries, they have been very firm in saying there should be international standards.

Question:

To what extent does the U.S. desire for the right of submarines to transit straits underwater affecting the reaching of an agreement on the straits question?

Answer:

I think in a way I answered the question earlier. The question of submerged transit by submarines is one aspect of the whole transit problem. Today, it is largely a military problem; but I don't think this will be the case in the future, since you may have cargo submarines in the future. The safest way for submarines to transit straits is submerged rather than on the surface. So that [illegible]

I think it's where, perhaps with a little more information and understanding we can get closer to agreement.

Question:

The fishing community has had problems concerning the location of species and they have given you trouble over that type of agreement—could you discuss some of the pros and cons of this issue?

Answer:

Basically our fisheries position was supported by the fisheries industry in the United States. There was an agreement between the distant water and coastal fishermen in general on this species approach as a way of protecting those two different interests on a reasonable basis. The scientific aspects of the species approach is something on which obviously different fish scientists can and do disagree. Some argue that from an administrative standpoint a fixed mileage area is easier to deal with than the concept that the extent of coastal state jurisdiction extends depends on where the fish are. On the other hand, I think that the concept that highly migratory fish should be treated differently from fish that basically stay off the coasts of one country is something that many people have accepted. The question of how you best implement that separate treatment is something presently being discussed.

Question:

There has been much discussion about the utilization of the ocean for the general purpose of mankind. As one gets closer to the voting stage it appears that countries are taking positions which are to their best advantage. Whatever the economic value of the oceans will be, do you see any fraction of the total value that states might be willing to put back into the international community? 10%, 1%, 0%?

Answer:

I think again it depends on what countries you are talking about. Our position on this has been consistently to advocate revenue sharing with the international community both in the deep seabed and in the area of coastal state resource management jurisdiction. The developing coastal states have not been sympathetic with that concept in the area of coastal state resource management. On the other hand, when you get to the deep seabed they want it virtually fully devoted to the international community. There is a very sharp difference in their point of views depending on the area. One factor that I didn't mention is that there has been increasing activity by the so-called landlocked and shelf-locked countries, that do not have a continental margin or else have a very limited one. They have votes too and are beginning to take a common position, so that even though you were to analyze this strictly in terms of the national interest of a particular country, it so happens that some countries' national interests can only be met by some kind of provision for taking care of the international com-

Question:

I would like to take you back to the free transit issue. The Soviet Union, which claims a 12-mile territorial sea, claims prior permission for all transit through its territorial waters is joining with you to demand free transit elsewhere. Isn't there a contradiction in the Soviet Union attitude?

Answer:

I have enough problems defending the U.S. position: I don't think I want to undertake defending the Russian one. For our part, we have made it very clear that whatever rules we propose to govern our transit in other countries' waters we will accept and intend to apply in our own areas. I think the problem that the Soviet position creates for other countries is something that may not be completely resolved at the Conference because it may be that the issue will be in terms of some concept, such as historic waters which will have to be resolved after the Conference, hopefully through compulsory dispute settlement. This is then one of the reasons we feel so strongly that there should be compulsory dispute settlement so some of these issues that are not fully resolved in a general treaty can be dealt with in due course and will not hold up the whole agreement on the treaty.

Question:

If the U.S comes to support a 200-mile economic zone limit, or some other mileage type limit, it would seem to me that this would mean a complete change in the U.S. policy, it would compromise our species approach, it would compromise Nixon's proposals for trusteeship zone etc., particularly with 200 miles. Do you think the U.S. might eventually get in a position where it would accept this proposal for other things the U.S. very seriously wants such as freedom to pass through the straits?

Answer:

You have asked some very loaded questions. When we talk about a 200-mile zone we can be talking about many different animals As far as the seabed is concerned, the U.S. continental margin proposal in many areas went beyond 200 miles. We feel the international content of the area is in many ways almost more important than what its exact extent is. The gut issues for us are protecting other uses of the area including freedom of navigation and scientific research and we feel that can only be done if you get into the treaty express provisions which you can hang your hat on, and if you can get compulsory dispute settlement. This is much more important than the exact distance involved or the concept involved. In the fisheries area we have opposed a fixed mileage zone.

Question:

Who then bears the burden of proof for international rights?

Answer:

In the straits area it would be essential, if you believe that free transit is important, that the transit be allowed to take place and then you litigate later on who is responsible for any violation of International standards. As far as navigation is concerned you would have to take that stand. If navigation is to be held up for a long litigation you don't have any rights.

Question:

Concerning the unilateral act jeopardizing international negotiations, could you say something about House Resolution 9 and the need for a deep-sea mining regime now?

Answer:

The issue here is one of what happens before you get agreement on an international regime and before that international regime becomes effective. Suppose our companies are in a position to go forward before that happens. To put it differently. If they are to make the investment necessary to do this, they need some assurance that the problem will be looked at from the standpoint of industry's interests. The problem looked at from the international negotiating standpoint is that a number of developing countries feel that the proposed interim legislation is just as much a unilateral act as extending your territorial sea; it is in essence preempting the international regime before it is ever established. You have both of these considerations. The United States did indicate its position on this problem just before this last session and at the session suggesting that the most constructive approach would be to work for having the international regime agreed to by 1974 or 1975 at the latest as the United Nations schedule now calls for; but more than that providing that the seabed rules would become provisionally operative immediately following agreement and not await the complex radification process which may take 2 or 3 years or more. This is the same approach that was followed with respect to the International Civil Aviation Organization and was very successful there. If this could be done here then you do not confront the issue. On the other hand, if it is impossible to get international agreement, then you will have to take another look at what the U.S. national interests would demand in terms of this activity.

Question:

In my years in the Congress I (Congressman Hastings Keith) was constantly confronted by my constituency which was more interested in the fisheries than they were perhaps in scientific aspects of the problem. I'd like to have you, for the record, develop that here a little more. I am sure that you were thinking of this audience when emphasizing freedom of navigation and scientific research. I would like to have you speak also with reference to the fisheries problem the Department of State as it represents the interagency task force and our government is very concerned with the fishery

problem is that fishing interests are less and less interested in going to sea because they don't see what the future holds for them. ICNAF hasn't been strong enough to effectively protect the resource, and the Assistant Secretary of Commerce at the opening of the international session in Washington, a year ago, said we might have to abandon this ICNAF regional approach if ICNAF couldn't come up with some revolutionary measures that would keep up with the revolutionary changes in fisheries technique. My question is, what is the same time table for the national agreement that will bind us more or less? And what do we do in the meanwhile to strengthen the regional operations and regional regulations of fisheries?

Answer:

In terms of your first question, about the importance of the fisheries issue, I think that the whole concept of the U.S. accepting and, in fact, agreeing to a coastal state resource management jurisdiction meets in very large measure the problem of the coastal fishermen. The coastal fishermen are going to have a preference and there is going to be U.S. regulation in this area, so that I think they are being very fully taken into account. This coastal state resource management concept is one of the basic points of our policy and is fortunately one on which there is fairly wide agreement with the exception of a small number of distant water fishing states. Now the problem, as you indicated in the second part of your statement, is that we can't have that put into effect right now, and so the time schedule is for 1974-75 for the treaty and then it may take some time to ratify it thereafter. In the meanwhile, I certainly agree with you that we should try, as I know the U.S. Government has been trying, to move the regional organizations along the same lines that we are moving in the Law of the Sea negotiations and convince ICNAF and other organizations to take more account of coastal state interests. How successful we will be remains to be seen. But I think the fact that this is what we want for a general law of the sea settlement can be helpful in terms of getting the regional groups to move that way.

Question:

Concerning the question of freedom of scientific research, do you mean by this that all states will benefit and, if so, what kind of guarantees would the underdeveloped countries have for equal consideration of the results?

Answer:

I think that by freedom of scientific research you do mean that this would be a right that all countries would have. The problem of achieving that is, to a certain extent, suggested by your second question because I think the developing countries that do not themselves have the capacity to carry on scientific research are not particularly interested in other countries having that right, and are frankly in many cases

suspicious of it. I think that it is very important that developing countries participate in scientific research in areas off their coast, and that provision of the necessary technical assistance is made. These are very important aspects of the negotiation. I wish we had had much more of this in the past. The scientific community has done an excellent job in this area. However, unfortunately in many countries sometimes the local scientists haven't told their foreign offices how much they have benefited by this. Hopefully more of them will do so in the future.

Question:

You said earlier that if in fact USSR and U.S. didn't accept the provisional Law of the Sea, then the Law of the Sea treaty wouldn't be very effective. Just now you mentioned that all but a few states accept the concept of coastal state jurisdiction over resources. I wonder, thereby, if those few states that don't include the USSR, Japan etc., who are necessary for an effective agreement? Second, I wonder, in relation to the previous comment on research, whether we distinguish between the concept of innocent research and non-innocent research as we do in the passage through straits.

Answer:

First, on the resource question I think we should narrow the problem if there is one. It is a fisheries problem and not a coastal state mineral resource jurisdiction as far as these countries are concerned. Now there is another group of states concerned with the seabed mineral resource problem (the landlocked and shelf-locked). As far as the Soviet Union and Japan are concerned, the fisheries problem is a difficult one. While I didn't mention it, because of time, certainly the problem of what you do about countries that have traditionally fished in a particular area is one that will have to be addressed. There will have to be some formula for dealing with the problem that those countries may have and, in some instances, there may be bilateral ways of taking care of it. While you can't say that the whole negotiation will depend on satisfying Japan and Soviet Union on fisheries, I think that certainly the whole package will have to be such that on balance what happens in that very difficult area is something that they can accept.

Concerning the kind of research, the approach that has been most publicly made in that area has been the approach referred to of the Academy of Sciences which has suggested a distinction between open research as that being carried on for the benefit of mankind and limited research made for the economic benefit of a small group.

Question:

Do you think those two definitions of research stand alone, or do you think there should be some machinery for differentiating what is, in fact, open research and

Academy is open publication and this occurs after the fact.

Answer:

I think the problem you mention is really a more general problem of the extent to which you have machinery which will itself define what certain terms mean or whether you try to spell it out in the treaty. I think frankly this is much too early in the negotiations to see just how that is going to work. You have very serious problems along the same line in the whole question of what sort of standards for pollution are you going to have. Are you simply going to try now to set up procedures for that or are you going to attempt to spell it out in detail? I think that, as a general principle, for something that is important to us you have got to get something in the treaty you can hang your hat on. You just can't leave the whole thing up in the air to be resolved by some subsequent machinery. On the other hand, sometimes it may not be to our advantage to get too detailed and we should rather prefer to have a more generalized statement.

Question:

Do you know what the U.S. position is as far as world fisheries? And if the 200-mile zone is adopted will the U.S. continue to go along and pay for the present licensing used by some coastal states?

Answer:

Well, you've asked two different questions. As I indicated, our position as far as the Law of the Sea negotiations is that a highly migratory species such as tuna should be dealt with through international arrangements and international organizations rather than by the coastal state. Coastal state resource management jurisdiction is what we favor for all other species of fish.

Now the question of what the U.S. is going to do in the interim is to a certain extent a matter which our Congress decides. The approach which we have been taking with respect to Peru and Ecuador has been mandated by Congress, so that this will essentially depend on Congress' views about what the prospects for settlement through an international agreement will be.

Dr. Fye:

Ladies and Gentlemen, you now see why I said Dr. Stevenson was the nation's leading authority on the subject. I know you could stay and ask some more questions, but I think we should give him a breather. We have some refreshments in the lobby, so please have some and meet Dr. Stevenson in person.

Approved For Release 2003/03/28 : CIA-RDP80B01495R000800140049-6